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Hearing Date: September 9, 2009
Time: 10:00 a.m.

Objections Due: September 3, 2009
Time: 4:00 p.m.

*Attorneys for James H. Cohen Special Trust
and other Investor-Claimants Captioned Below*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES INVESTOR PROTECTION : Adv. Pro. No. 08-01789 (BRL)
CORPORATION, :

Plaintiff, :

SIPA Liquidation

v. :

BERNARD L. MADOFF INVESTMENT :
SECURITIES LLC, :

Defendant. :

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In Re: Objection to the Trustee's Determination
of Claim with Respect to :
JAMES H. COHEN SPECIAL TRUST, :
MORRIE ABRAMSON, :
BARRY E. KAUFMAN, :
JAMES H. COHEN, :
ROBYN C. BERNIKER, :
ALAN D. GARFIELD, :
MARION TALLERING-GARFIELD, :
ERIN M. HELBERG, :
THE MARIAN COHEN 2001 :
RESIDENCE TRUST, and :
BK INTEREST, LLC, :

Investor-Claimants :

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**RESPONSE AND NOTICE OF
OBJECTIONS TO TRUSTEE'S
MOTION ON "NET EQUITY" ISSUE**

**NOTICE OF OBJECTIONS
TO TRUSTEE'S MOTION ON
THE "NET EQUITY" ISSUE**

We represent a pass-through grantor trust, The James H. Cohen Special Trust (the "Special Trust") and its nine beneficiaries MORRIE ABRAMSON, BARRY E. KAUFMAN, JAMES H. COHEN, ROBYN C. BERNIKER, ALAN D. GARFIELD, MARION-TALLER-ING-GARFIELD, ERIN M. HELBERG, THE MARIAN COHEN 2001 RESIDENCE TRUST and BK INTEREST, LLC (collectively, the "Investor-Claimants"). The Special Trust and the Investor-Claimants, by and through their undersigned attorneys, hereby respond to, and give notice of their Objections to, Trustee's Motion for an Order to Schedule Hearing on "Net Equity" Issue, dated and filed with the Court on August 27, 2009 (the "Motion").

BACKGROUND

1. The Investor-Claimants do not object to the procedure proposed by the SIPC Trustee of the Bernard L. Madoff Investment Securities LLC (the "BLMIS Trustee") for resolution of the "Net Equity" issue.

2. Investor- Claimants respectfully suggest use of the same procedure for other common issues in this proceeding. These issues should include that of whether investors with BLMIS whose funds had been aggregated (e.g., into a trust) through fraudulent inducement by BLMIS should be treated as a single "customer" or as separate "customers" for purposes of the Securities Investor Protection Act ("SIPA") (the "Fraudulent Aggregation Issue"). Because the BLMIS investors who are affected by the "Net Equity" Issue are not identical to those affected by the Fraudulent Aggregation Issue, and because both issues are matters of substantial complexity, we suggest that the two issues be treated in separate motion proceedings.

3. The Investor-Claimants previously filed their Objections with respect to the Trustee's determination of their SIPC claim in this proceeding, entitled, "*Special Trust and Investor-Claimants' Objections to Trustee's Determination of Claim*" (the "Objections"). See Document Nos. 384 and 390). Those Objections are incorporated herein by reference, including without limitation the "Fourth Objection" through the "Eighth Objection" at pp. 42- 46 of the Objections.

4. The Trustee's present Motion, at p., 3, ¶ 10, correctly states that :

Various claimants have asserted that Net Equity should be determined on the basis of each claimant's balance as shown on their November 30, 2008 account statement provided by BLMIS or, alternatively, that the calculation should reflect the time value of money deposited by each claimant and/or interest, unjust enrichment or other factors as described in the objections that have been filed in the above-referenced action.

The Investor-Claimants are among those who support this view. We submit that it is the only interpretation consistent with the plain language of SIPA, the statute's legislative history, and its correct interpretation relative to well-settled principles of statutory construction.

5. The Investor Claimants also concur with the BLMIS Trustee's proposed motion and briefing schedule:

October 16, 2009	Trustee's motion(s) to affirm certain customer claims determinations on the "Net Equity" issue, and Trustee's brief on the issue.
November 13, 2009	Deadline for Objecting Claimants and "Interested Parties" (as defined) to file briefs in opposition to Trustee's Motion(s).
December 11, 2009	Interested Parties' Brief in <i>support</i> of Trustee's Motion(s).
January 15, 2010	Reply papers from the Trustee.

DATED: New York, New York
September 2, 2009

Respectfully submitted,

BRUNELLE & HADJIKOW, P.C.

By: 
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Marian Talling-Garfield, Erin M. Helberg,
The Marian Cohen 2001 Residence Trust and
BK Interest, LLC*

CERTIFICATE OF SERVICE

Timothy Kebbe, the undersigned, certifies that on September 2, 2009, I caused a true and correct copy of the "Response and Notice of Objections to Trustee's Motion on the "Net Equity" Issue." to be served upon the parties listed on the attached service list via electronic mail as indicated therein.



Timothy Kebbe

SERVICE LIST
VIA ELECTRONIC MAIL

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